

# भारत का राजपत्र

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नई दिल्ली, भानिवार, फरवरी 19, 1994/माय 30, 1915

No. 8]

NEW DELHI, SATURDAY, FEBRUARY 19, 1994/MAGHA 30, 1915

इस भाग से भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—भाग 3—उप-उप (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केंद्रीय अधिकारियों द्वारा आर्ती किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administration of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 24 जनवरी, 1994

आ. अ. 15.—जोक प्रतिनिधित्व अधिनियम, 1951  
(1951 का 43) की धारा 106 के अनुसारण में, निर्वाचन  
आयोग 1991 की अर्जी सं. 3, गुजरात उच्च न्यायालय,  
अहमदाबाद के नारीख 8-10-93 के निर्णय एतद्वारा प्रकाशित  
करता है।

[रा. 82/गुजरात-लो.स./(3/91/93)]

आदेश से,  
वर्तवन मिह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 24th January, 1994

O.N. 15.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment/Order, dated 8-10-93, of the High Court of Gujarat at Ahmedabad, in Election Petition No. 3 of 1991.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Election Application No. 7 of 1993

IN

Election Petition No. 3 of 1991

Chandubhai Deshmukh,  
Adult, Occupation Social Worker  
Residing Rajpipla, Tal Nanded  
District : Bharuch.

....Applicant.  
(Orig. Respondent)

Versus

Sunilkumar Babubhai Patel  
Adult, Occupation Lawyer  
Add. Havelli Padia  
Ankleswar, Dist. Bharuch.

....Opponent  
(Orig. Petitioner)

Election Application No. 7 of 1993 praying that Election Petition No. 3 of 1991 filed by opponent against the applicant be dismissed in limine and etc.....

Advocate Mr. H. L. Patel for the Applicant.

Advocate M/s. N. D. Nanavati and Tushar Mehta for the opponent.

Court Coram : N. J. Pandya,  
8th October, 1993

Order below Election Application No. 7 of 1993.

**ELECTION PETITION NO. 3 of 1991**

Coram : N. J. Pandya, J.

8th October, 1993

Order below Election Application No. 7 of 1993.

This is an application given in the said Election Petition raising a very important point as to non-compliance with the provisions of the Representation of the People Act, 1951, more particularly with regard to non-supply to the present applicant i.e. the successful candidate of audio and video cassettes of Sadhvi Rutumdhara when according to the original petitioner, it forms an integral part of the petition. This would render the petition incomplete and hence, as requested in the present application, the Election Petition is required to be dismissed in limine under Sec. 86 of the said Act.

2. Similar question had arisen before my learned brother Justice K. G. Shah in Election Petition No. 1 of 1991. Identical material was relied on by way of evidence for the purpose of getting the reliefs prayed for in the said petition.

3. The learned judge in his detailed order, while considering this point, has agreed with the respondent of that election petition and has held that copy of the Election Petition supplied to the respondent is not a true copy of the original Election Petition for the reason, among other reasons, that the video cassette referred to in the petition as an integral part of the petition, was not supplied to the respondent. This was held to be not complying with the requirement of Sec. 31(3) of the said Act and hence, the order of rejection was passed by the learned Judge.

4. In the instant case, analysing the case before learned brother Justice K. G. Shah, copy of the election petition supplied had all the pages, while in the matter before the learned judge, page no. 24 of the original petition was missing from the copy supplied to the other side. However, admittedly when neither the copy of the video nor the audio cassettes has been supplied to the respondent of the original election petition, obviously, there is non-compliance with the requirement of Sec. 81 of the said Act.

5. On this point i.e. supplying incomplete copy or non-supply of integral part of material, there are several authorities starting from AIR 1964 S.C. p. 1027, AIR 1971 S.C. p. 342, AIR 1983 S.C. p. 558, AIR 1984 S.C. p. 305, AIR 1984 S.C. p. 956, AIR 1990 S.C. p. 924. Obviously, as per the aforesaid decisions, the emphasis will be on the material facts or particulars relating to any corrupt practice may be contained in a document and the election-petitioner without pleading the material facts or the particulars of corrupt practice may refer to the document and when such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the documents becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition.

6. Further reasoning is that sec. 81(6) of the said Act provides for giving a true copy of the Election Petition. When a document forms an integral part of the Election Petition and copy of such document is not furnished to the respondent along with copy of the election petition, the copy of the Election Petition will not be a true copy within the meaning of Sec. 81(3) and as such the Court has to dismiss the Election Petition under Sec. 86(1) for non-compliance with Sec. 81(3). In the aforesaid judicial pronouncements, if we examine the present petition, it is quite clear that the programme of show of video cassettes of Sadhvi Rutumdhara as well as playing of audio cassettes have been referred to at various places in the petition. Admittedly,

their copies are not supplied to the respondent. The provisions of Sec. 81(3) are therefore, violated and hence, the consequence under Sec. 86(1) will have to follow.

7. I, therefore, allow the application and hold that the Election Petition is required to be rejected under Sec. 86(1) of the said Act and the Election Petition is accordingly rejected. The parties are left to bear their own costs.

The substance of this decision be intimated to the Election Commission, and the Speaker of the House of Parliament at the earliest and an authenticated copy of this judgment be sent to the Election Commission.

Sd/-

(N. J. Pandya, J.)

[No. 82/GJ-HP/(3 of 91)/93]

By Order,

BALWANT SINGH, Secy.

नई दिल्ली, 25 जनवरी, 1994

आ. प्र. 16.—लोक प्रतिनिधित्व प्रधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग 1991 की निर्वाचन भर्ज सं 20 में इलाहाबाद उच्च न्यायालय, इलाहाबाद के तारीख 27-11-1992 के निर्णय को एनबड़ारा प्रकाशित करता है।

[स. 82/उ.प्र.-लो.स./20/91]

आदेश से,

हरिहर हीरा, मंचिय

New Delhi, the 25th January, 1994

O.N. 16.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement dated 27-11-92 of the High Court of Judicature at Allahabad in Election Petition No. 20 of 1991.

**IN THE HIGH COURT OF JUDICATURE AT  
ALLAHABAD**

**CIVIL SIDE**

**ORIGINAL JURISDICTION**

**DATED : ALLAHABAD · 27-11-1992.**

**BEFORE THE**

**HON'BLE G. D. DUBE, J.**

**Civil Misc. Application No. (....) of 1992.**

**(Under Order 7 rule 11 and order 6 rule 16, C.P.C.)**

**AND**

**Civil Misc. Application No. (....) of 1992.**

**(Under Section 86(1) of the Representation of Peoples Act)**

**IN**

**Election Petition No. 20 of 1991.**

**Order on the Application in Election petition No. 20 of 1991 filed by Dr. Shiv Narayan Gautam.**

## IN RE :

D/-, Shiv Narayan Gautam. . . Petitioner

Vs.

Arjun Singh &amp; Others.

In respect of 72, Firozabad Parliamentary Constituency,  
District—Firozabad. . . Respondent

Counsel for the petitioner : Mr. M. C. Gupta.

Counsel for the Respondents : M/s K. R. Singh

S. N. Srivastava

(By The Court)

In this election petition challenging the election of respondent No. 7, Prabhu Dayal Kathuria, as a Member of the Parliament, 72-Firozabad Parliamentary Constituency, two applications have been moved. The first is under section 86 (1) of the Representation of Peoples Act, 1951 (hereinafter referred to as the Act only). The other application is under order 6 rule 16 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code only).

2. In the first application under section 86 (1) of the Act, the contesting candidate, respondent No. 7, has alleged that the copy supplied to this successful candidate did not comply with the provisions of section 81 (3) of the Act. Consequently, it was prayed that the election petition should be dismissed under section 86 (1) of the Act. The main contention of the contesting respondent is that the words "attested to be true copy" are missing on each of the pages of the petition. The copy supplied to the applicant has been annexed with the application. This copy consists of the petition and schedules. The pages 1 to 38 of the petition contain only the signatures of the petitioner on the left hand margin. Thereafter occurs schedule No. 1. The first two pages bear the signatures in the aforesaid manner. On the third page of the schedule, there is a verification with the attestation by the petitioner bearing the words "attested true copy". Similarly, the first page of schedule No. 2 bears only a signature and attestation as stated above. The first two pages of schedule No. 3 bear mere signatures and attestation on the last page containing verification. The first page of schedule No. 4 also bears a signature and attestation on the last page. Thereafter, the pages 39 to 45 contain the signatures and the attestation on the last page bearing the verification clause. At the end, there are four schedules. In these schedules, all the pages except the last page bearing the verification contain only the signatures of the petitioner. On the last page of each schedule, there is an endorsement "attested true copy" and the signature of the petitioner below it. In the last, a list of documents has been annexed. The first page of this list bears only a signature of the petitioner. The last page bears the attestation in the manner stated above.

2A. The petitioner has filed objection against this application. It was urged that by signing each paper, the petitioner took the responsibility of the contents. It was not necessary to attest each page. It was further urged that this application was only moved with an intention to delay the proceedings and ought to be dismissed with costs of Rs. 1,500/- which the petitioner had incurred in contesting the application.

3. A rejoinder-affidavit was also filed to this application. It was urged that no counter-affidavit was filed by the petitioner and, therefore, the contents in the affidavit of the applicant should be considered as uncontested. It would suffice to say in this respect that the pleas raised by the applicant were legal pleas and non-filing of counter-affidavit has no effect at all.

4. Sections 81 and 86 of the Act read as under :

"81. Presentation of petitions.—(1) An election petition in question any election may be presented on one or more of the grounds specified in sub-section (1)

of Sec. 100 and Sec. 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those who dates.

Explanation—In this sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

Sub-section (2) deleted.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

"86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Sec. 81 or Sec. 82 or Sec. 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under Cl. (2) of Sec. 98."

5. It was urged by learned counsel for the applicant that the above mentioned provision is mandatory and any non-compliance should be fatal to the election petition. My attention was drawn to Jagan Nath Vs. Jaswant Singh : AIR 1954 SC 210. The Supreme Court has laid down that the election law must be strictly construed. The Supreme Court had observed as under, laying down the general principles relating to election law and how an election of a successful candidate would be challenged in the Court of law.

"(7) The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the trial of the case is not affected."

6. Relaying on the above principles, learned counsel for the applicant urged that it was necessary for the petitioner to attest each page with an endorsement 'attested to be true copy' so that the applicant may know that the petitioner seriously takes the responsibility of the contentions in the petition. It was urged that sub-section (1) of section 86 of the Act uses the words "shall dismiss an election petition" for non-compliance of the provisions of section 81 and other sections of the Act. It was, therefore, urged that if there be any non-compliance of the mandatory provisions of section 81(3) of the Act, the court will be bound to dismiss the election petition. In this respect reliance has been placed by learned counsel for the applicant on Sarif-ud-Din Vs. Abdul Gani Lone : AIR 1980 SC 304. This was the case relating to election in the State of Jammu and Kashmir to which Jammu and Kashmir Re-

presentation of Peoples Act (4 of 1957) was applicable. Paragraph 5 of the judgment states that section 89(3) and Section 94(1) of Jammu and Kashmir Representation of people Act correspond to Sections 81(3) and Section 86(1) of the Act. There is no difference between the language of the two sections occurring in the two acts. In this case the copies filed with the election petition contained a attestation reading : "attested true copy, Pyare Lal Andu, Advocate". On these facts it was held that the petitioner challenging the election had not complied with section 89(3) of the Jammu and Kashmir Representation of people Act. This order of the High Court was upheld by the Supreme Court. In this case the Supreme Court laid down the task for determination as to whether any rule is mandatory or directory in the following words :—

"The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which, the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus : The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

7. Laying down the above test of determination of mandatory or directory nature of rule the Supreme Court did not accept the contention of the petitioner who was the appellant before the Supreme Court, that the object of enacting sub-section (3) of Section 89 of the Act was merely procedural. The Supreme Court observed as under :—

"Sub-section (3) of Section 89 of the Act provides that a copy of the petition shall be attested by the petitioner "under his own signature" to be a true copy of the petition. The emphasis in the above provision appears to be on the words "under his own signature". . . . .

"The object of requiring the copy of an election petition to be attested by the petitioner under his own signature to be a true copy of the petition appears to be that the petitioner should take full responsibility for its contents and that the respondent or respondents should have in their possession a copy of the petition duly attested under the signature of the petitioner to be the true copy of

the petition at the earliest possible opportunity to prevent any unauthorised alteration or tampering of the contents of the original petition after it is filed into court."

8. After making the above observations the Supreme Court opined that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition.

9. The facts of the Sharifuddin's case were quite different. The decision has no bearing on the question involved in the present case. Only the broad principles laid down by the Supreme Court has to be kept in mind while disposing this application.

10. In Jyoti Basu and others Vs. Debi Ghosal and others AIR 1982 SC 983 the Supreme Court had observed under :—

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied."

11. In Mithilish Kumar Pandey V. Baidyanath Yadav.—AIR 1984 SC 305 There were mistakes in copies supplied to the elected candidate i.e. it contained clerical or typographical mistake which were omissions relating to some facts giving wrong names etc. It was held to be fatal. It was held that such mistakes were likely to cause serious prejudice for the defence by the elected candidate. On facts also his case has no bearing. There is no dispute that the copies supplied to the applicant is not identical to the election petition.

12. In Rajendra Singh Vs. Smt. Usha Rani.—AIR 1984 SC 956 also incorrect copies of the election petition were supplied to the elected candidate. This mistake was held to be fatal. This case too has no bearing on the present case.

13. Veer Prakash Gaur Vs. Sukhan and others.—AIR 1984 Delhi 276 was a case in which the copies filed along with petition were not attested by the petitioner under his own signature to be true copy of the petition. In the present case the applicant has signed each page and on the last page of the petition as well as the schedule has made the attestation of the copy being a true copy.

14. Ram Prakash Tripathi Vs. Smt. Sheela Dixit : 1988 ALJ 630 is a judgment of this Court. In this case on each page of the copy there was an endorsement of "true copy" signed by the petitioner. It did not contain any endorsement to the effect "attested to be true copy" or "attested to true copy". Relying on the cases of Sharifuddin and Rajendra Singh's case a single Bench of this Court held that the above endorsement was not in accordance with section 31(3) of the Act and therefore, election petition was liable to be dismissed.

15. On the above ground it was argued that the above judgment of this court really lays down that each page of the copy should be attested as true copy and non-compliance should be fatal.

16. In reply to the above argument the learned counsel for petitioner cited F. A. Sapa Vs. Singora (1991) 3 SCC 375. In this case an objection had been raised that the copy of petition served on each of the respondents were not attested to be true copy of the original petition as required by section 81(3) of the act. On this objection raised by the appellant the Supreme Court observed :-

"On a plain reading of Section 81(3) it becomes clear that the requirement of that provision is,

(i) the election petition should be accompanied by as many copies thereof as there are respondents mentioned in the petition and (ii) every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. There is no dispute in regard to the compliance of the first part. So far as the second part is concerned, all that the section requires is that the copy should be attested by the petitioner to be a true copy of the petition under his own signature. The requirement of this part of the provision is met by each copy having been signed at the foot thereof by the concerned petitioner. What is essential is that the petitioner must take the responsibility of the copy being a true copy of the original petition and sign in token thereof. No particular form of attestation is prescribed; all that the sub-section enjoins is that the petitioner must attest the copy under his own signature to be a true copy of the petition. By certifying the same as true copy and by putting his signature at the foot thereof, the petitioner if each election petition had clearly complied with the letter and spirit of Section 81(3) of the R. P. Act. In fact in Subha Rao V. Member E. T. Hyderabad (1964) 6 SCR 213 : AIR 1964 SC 1027 : 26 ELR which was followed in Kamalam case : (1978) 2 SCC 659. (1978) 3 SCR 446 this Court had accepted the mere signature without the words like true copy, sufficient attestation under Section 81(3) of the R. P. Act. We are, therefore, in agreement with the finding recorded in this behalf by the court.

17. As regards Ram Prakash Tripathi's case, it was urged that a single Bench of this Court presided by Hon'ble Dr. R. R. Misra, J had referred the following two questions to a large Bench in Election Petition No. 3 of 1986, Dhan Singh Vs. Indira Hridesh and others.

1. Whether substantial compliance of any mandatory provision of the law, especially of sub section (3) of Section 81 of the Representation of the people Act shall be sufficient, or whether there should be literal compliance in order to save dismissed of the election petition under sec. 86(1) ?
2. Whether it is necessary for compliance of the provisions of Section 81(3) of the Act to mention the words attested true copy above signatures of the election petitioner on each copy or whether mere signature; or signature with the words 'true copy' will be complete compliance of the provisions of the law ?

It was also urged that in view of the above reference, the decision of this Court should await the judgment of the Division Bench.

18. I have not been informed by the party's learned counsel that any Bench has been constituted by the Hon'ble the Chief Justice for answering the aforesaid two questions.

19. In F.A. Sapa's case (Supra) the Hon'ble Supreme Court has held, that the essentials and the spirit of Section 81(3) require that the petitioner must take responsibility of the contents of the copy and no particular form of attestation is required. It was categorically held in this case that by certifying the same as true copy and by putting his signature at the foot thereof at the end signing each page of an election petition a petitioner clearly complies with the letter and spirit of section 81(3) of the Act. In view of these pronouncements it is not necessary to await the answers to the two questions referred to larger bench.

20. In the present case the learned counsel for the petitioner has pointed out that each page has been signed by the petitioner. At the end of the petition and each schedule the petitioner has signed below the word reading 'attested true copy'. This is a sufficient compliance of section 81(3) of the Act.

20A. The learned counsel for the applicant has urged that in F.A. Sapa's case only two points were considered which were as under :—

- (1) The election petitions are liable to be dismissed in limine under section 83 of the Representation of the people Act, 1951 as the affidavit filed by the election petitioner in each case, is not strictly in conformity with Form 25, inasmuch as the verification as regards the averments based on knowledge and the averments based on information has not been made separately as required by the said Form prescribed under Rule 95-A of the Representation of the People Rules, 1951 ; and
- (2) The copies of the election petitions served on the petitioners herein (the respondents in the election petitions) not being true copies of the election petitions were not maintainable and were liable to be dismissed in limine in view of Section 81 read with Section 86 of the Representation of the People Act, 1951.

21. Since the question involved in this present case was not involved in F.A. Sapa's case; it was urged the ratio in the said case is not applicable to the present matter. I do not agree with this contention. In the beginning of the paragraph from which extracts have been quoted above the Supreme Court has stated that the objection raised by the appellant in F.A. Sapa's case was that the copy of the petition served on each of them was not attested to be true copy of the original as required by section 81(3) of the Act. In this case each copy was attested as 'certified true copy' and the petitioner had put his signature thereunder. It was contended that this was not in conformity with Section 81(3) of the Act, and therefore, mandatory requirement of Section 81(3) read with Section 86(1) has not been satisfied. The above mentioned facts clearly go to show that the question involved in this election petition was also actually considered and the observations were made by the Supreme Court. Even an obiter of the Supreme Court is binding on this Court. By signing each page and attesting the copy to be true copy in the end with a signature below is a sufficient compliance of Section 81(3) of the Act. By this act the petitioner takes responsibility of each page.

There is no force in this first contention that the petition should be rejected under section 86(1) of the Act.

22. The learned counsel for the applicant had relied upon Subha Rao Vs. Member E.T. Hyderabad and Kamalam Case reported in AIR 1964 SC 1027 and (1978) 3 SCR 446 respectively in support of his contention. These cases had been considered by the Supreme Court in F.A. Sapa's case, hence there is no necessity to deal them separately in this judgment.

23. In the second application under order 6 rule 16, read with order 7 rule 11 of the code the respondent-applicant has alleged that the petition does not contain the material facts as to disclose the grounds on which the election of the applicant is being challenged. It was urged that the grounds contained in paragraph 6 of the election petition which were detailed from paragraphs 7 to 75 do not state the material facts and therefore, being vague and inconsistent at every place do not disclose cause of action as to make the election of the respondent No. 7 invalid and liable to be cancelled. It was urged that paragraphs 1 to 5 of the petition contain only preliminary facts. The paragraphs 7 to 21, 23 to 26, 28, 29, 30, 33 to 35, 37, 39 and 44 of the petition are irrelevant. They contain only procedure and provision of the counting and do not state any irregularity or illegality in counting of vote or any material affecting the result of election. It was further urged that grounds A, B and C and paragraphs 22, 27, 31, 32, 36, 38, 40 to 43 and 45 to 75 contain only vague and general allegation and do not contain any material fact.

It was also urged that Form 16 part I and II, and Form 20 which are basic records regarding counting have been referred to in the petition. Copies thereof which are sole basis of allegation have not been filed with the election petition. It was urged that if the paragraphs 22, 27 etc. mentioned above and grounds A, B and C are struck off then there remains no material on which the respondent No. 7 should be asked to file his written statement.

24. In reply to this application under order 6 rule 16 of the code of petitioner has stated that all necessary material facts have been stated. Wherever there was a difference of votes on account of mistake of counting the figure and the details have been furnished in the paragraphs. It was also urged that if all the discrepancies in the counting as mentioned in the election petition are totaled, then it would appear that had the counting been done properly, the petitioner would have obtained more votes than the respondent No. 7 and would have been declared elected.

25. The petitioner has mentioned the grounds in paragraph 6 of the petition in the following words :

- A. Because the result of the election in so far as it concerned respondent No. 7 has been materially affected by non-compliance and the contravention of the provisions of the Representation of People Act, 1951 and Conduct of Election Rules, 1961 and Orders made thereunder and direction issued from time to time by the Election Commissioner of India, under the Act, Rules and Constitution of India.
- B. Because the result of the election, in so far as it concerned respondent No. 7 has been materially affected by the improper reception of invalid votes in favour of the respondent No. 7 and by improper refusal of acceptance of valid votes of the petitioner and by improper counting of petitioners valid votes as valid votes of respondent No. 1 to 15 and by reception of void votes for respondent No. 7.

26. The ground No. 6 simply says that election is bad because the petitioner received majority of valid votes. Ground C is a consequence of grounds A and B quoted above.

27. The learned counsel for the applicant (Respondent No. 7) has urged that election of a candidate can be challenged only on the grounds mentioned in sub-section (1) of Section 100 of the Act. It was urged that the grounds given in the petition are not covered by any provision of section 100 of the Act. The learned counsel contended that in clause (a) of sub-section (1) of Section 100 of the Act the election is challenged on the ground that on the date of election a returned candidate was not qualified or was disqualified, to be chosen to fill the seat; Clause (b) relates to corrupt practice; sub-clause (c) relates to improper rejection of nomination. He argued that at the best the relevant clause applicable to the present matter may be the sub-clause (d) of sub-section (1) of Section 100. It reads as under :—

- (d) that the result of the election in so far as it concerns a returned candidate, has been materially affected—
- (i) by the improper acceptance of any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

28. The sub-section (2) relates to the matters concerning corrupt practice in the election. This sub-section (2) is therefore, not relevant in the present matter. It is not

disputed that the allegations in the election petition are covered by clause (d) (iii) and (d) (iv) of sub-section (1) of Section 100 of the Act.

29. It was urged by the learned counsel for the applicant that the petitioner must disclose the necessary facts in his election petition on the basis of which the petitioner can demonstrate that had these irregularities been not committed then the petitioner would have been declared elected. The facts stated in the petition must show that there are circumstances that the votes were wrongly recorded or counted in favour of the elected candidate. The learned counsel for the applicant has cited several case laws in support of his contention and has also taken me through the petition for the purpose of showing that petition does not disclose the necessary material facts.

30. Paragraphs 1 to 5 of the petition disclose the facts as to how the election was conducted. Paragraph 1 discloses that the parties mentioned in the petition were contesting candidates. Paragraph 2 discloses the last date of making nomination, date of scrutiny of the nominations etc. Paragraph 3 discloses that the date of election was changed. Paragraph 4 simply states that respondent No. 7 was illegally declared elected in the election. Paragraph 5 discloses the number of votes secured by each candidate. Paragraph 6 contains grounds which have been quoted above. Paragraph 7 simply states that the concise statement of material facts contained in the grounds mentioned above are mentioned in paragraph 8 and onwards. Paragraph 8 relates the extent of Parliamentary Constituency from which the applicant was elected. Paragraph 9 relates the procedure of election. It was alleged in the end that there was no complaint by any polling Officer that any voter had taken away any ballot paper.

31. In paragraph 10, it was stated that the Deputy Election Officer, Agra, had issued information under rule 31 of the Conduct of Election Rules, 1961 (hereinafter referred to as the Rules) that counting will be done of fifteen tables for Bah, Firozabad and Kheiragarh Assembly Constituencies and fifteen tables for parliamentary Constituencies in each Assembly Constituency. On the other hand, the Deputy District Election Officer, Firozabad, who was also Assistant Returning Officer, had issued a written information No. 438/Ni-Ka./91 dated 29-5-91, by which general public was informed that counting of ballot papers of Firozabad and Shikohabad Assembly Constituencies will take place simultaneously for parliamentary and Assembly Constituencies. It was pointed out that in one pandal ten counting agents will be appointed by each candidate. On the basis of these facts the petitioner has opined—"this means that there will be only twenty tables—ten each for Assembly and ten each for parliamentary in one pandal". Thereafter, the petitioner says that in Agra for each Assembly segment fifteen counting tables were provided and every candidate was permitted to appoint sixteen counting agents. It would be worth mentioning here that the written intimation mentioned in this paragraph has not been filed. According to the procedure narrated by the petitioner in paragraph 9, the voters had put separate ballot papers regarding Assembly and Parliamentary Constituencies in one ballot box. Hence the sorting of the ballot papers of parliamentary and assembly Constituencies would have been started on one table. It was not possible to bifurcate the counting from the very beginning on two tables—one for the Assembly and the other for Parliamentary Constituency. For want of the alleged written intimation dated 29-5-1991, this Court cannot come to the conclusion that twenty tables—ten for Parliamentary and ten for Assembly were actually allotted. If the written intimation states that ten counting agents could be appointed then how sixteen counting agents were appointed has not been stated. For want of written intimation, the applicant will not be able to answer the statement in paragraph 10 effectively. In item no. 7 of the list of documents given at the end, the petitioner has mentioned that the orders/notifications for appointing counting agents in 72-Firozabad Parliamentary Constituency shall be relied by him. Since the petitioner has given the specific number of a notification, then it is apparent that he is in possession of this document and he ought to have annexed it with the petition as to enable the applicant, the elected candidate, to know the exact nature of allegations in paragraph 10. This paragraph is self contradictory.

32. In paragraph 11 of the petition, the petitioner states that on account of movements by Bhartiya Janta Party and other organisations regarding construction of Ram Mandir at Ayodhya large number of State and Central Government employees had sympathy towards these movements. This paragraph also states that people involved in the State movements were given tickets by the Bhartiya Janata Party. In paragraph 12, it was alleged that the District Magistrate, Firozabad and Assistant Returning Officer, Firozabad Assembly and Shikohabad Assembly segments had sympathies with Bharatiya Janata Party candidate, the applicant and desired that he should win. This paragraph 12 had been verified by the petitioner true to his information which he believed to be true. How this information was based has not been disclosed in the petition. For want of this particular, it would be difficult for the applicant to state his view point in his defence.

33. In paragraph 13 of the petition, the petitioner complains that press reporters were not permitted in the pandals to see the counting arrangements while such facilities had been provided in earlier elections. This cannot be the cause affecting result of election. In para 14, it was stated that in Firozabad and Shikohabad Assembly Constituency segments counting was done for assembly and parliamentary on ten tables and only ten counting agents were permitted in the pandal even though some of the candidates had applied for more counting agents. In the latter part, the paragraph described that the Returning Officers were required to give badges to the counting agents bearing the serial number of the table bearing the photograph and the signatures of the counting agents. Paragraph 15 extracts the clauses 4(a) and 5(a) from the handbook for Returning Officer. In paragraph 16, it was simply stated that the Assistant Returning Officers for Shikohabad and Firozabad segments decided to get counting of the votes done on ten tables only. In paragraph 17, it was stated that this very information was conveyed to the petitioner. In paragraph 18, it was alleged that the petitioner's election agent had appointed sixteen counting agents and supplied their photographs, but only ten badges were provided.

34. The paragraphs 13 to 18 do not disclose any cause of action. In paragraph 19, the petitioner stated that in Firozabad and Shikohabad Assembly segments counting started only on ten tables in each pandal whereas ten tables were kept in the Pandil. The counting should have been done on different tables for Parliamentary and Assembly Constituencies. In paragraph 20, the petitioner stated that on account of large number of candidates in the Assembly and Parliamentary Constituencies, counting agents could not effectively watch the counting as the counting agents were permitted to watch counting only from one side of the table. In paragraph 21 also, the petitioner complains that his counting agents had to remain some time in the second row or in the last row. When objections were raised by the counting Supervisors, they were not heard by the counting Supervisors. There is no mention in paragraph 21 that the complaints were written or oral. There is no mention of the names of the counting agents who raised the objections. Even the name of party of the candidate to whom these agents belonged has not been disclosed.

35. In paragraph 22, the petitioner complained that trays were not supplied to the table and, therefore, the ballot papers were kept on the tables in such manner that they overlapped over each other and the counting agents could not effectively watch them. The word 'effectively' in this paragraph is very significant. This itself indicates that the objections now raised in the petition are only based on conjecture and in a hope that if on account of inspection of ballot papers and allied documents there appears to be some irregularity, then the election may be challenged as irregular. Same type of allegation has been made in paragraph 37.

36. In paragraph 23, the petitioner alleged that on account of small size of Shikohabad pandal the counting agent of the petitioner had to remain in the second or third row. In paragraphs 24 to 26, the petitioner has repeated the allegations that on account of large number of counting agents his counting agent could not note the irregularities.

37. In paragraph 27, it has been alleged that officials counting the votes worked with great speed making it impossible for the counting agents to note the invalidity and defects in the ballot papers. In paragraph 28, it was alleged that when objections were raised to counting staff, they declined to amend their procedure. I am of the opinion that working of the counting staff with speed is not at all any irregularity. These paragraphs do not show any cause of action with regard to any irregularity in the election.

38. Paragraph 28 extracts paragraph 17(r) of Handbook for Returning Officer. Paragraph 30 states that in the first round counting the petitioner was leading by 6219 votes in Firozabad segment. It was alleged in paragraph 31 that on account of this lead the Assistant Returning Officer, Sri K. M. Laf became apprehensive that the petitioner may win and, therefore, deployed a large number of C.R.P.F. Jawans and police personnel to prevent petitioner's counting agent from raising objections to the irregularities. Here too the name of counting agent is missing.

39. In paragraph 32, it was alleged that after the first round of counting at Firozabad the counting tables were increased from ten to twenty, but the petitioner was not permitted to appoint ten more counting agents. In paragraph 33, it has been urged that as required by clauses 6(b) and (d) of Chapter 14 of the 'Handbook for the Returning Officer' Gazetted Officers were not required as counting supervisors. In paragraph 34, it was alleged that unauthorised persons were moving in the pandal of accounting who had neither counting badges nor identity cards. This paragraph has been verified as true on information. It has not been stated as to how this information was received. Hence it is too vague.

40. In paragraph 35, clause 17 of Chapter 14 has been quoted.

41. In paragraph 36, it was alleged that the instructions contained in Clause 17 as quoted in paragraph 35 were not followed by the Assistant Returning Officer. It was alleged that only doubtful ballot papers were first taken to the Returning Officer by the Counting Supervisor and after obtaining orders on the ballot papers the same were brought to the table and put the unrejected ballot papers invariably in the packet of respondent No. 7. Thereafter, the Counting Supervisor corrected the part second of Form No. 16. It was not alleged in this paragraph that the un-rejected ballot papers kept in the bundle of the applicant (Respondent No. 7) did not contain the votes casted in favour of the applicant. It does not contain any material, i.e. number of ballot papers etc. to show that it actually materially affected the result.

42. In paragraph 33, the petitioner alleged that his counting agents had objected against many invalid ballot papers in both segments at Firozabad, but in spite of their objections these ballot papers were not even kept in the bundle of doubtful ballot papers. In this paragraph, the petitioner has not stated whether the objection raised was written or oral. The names of the counting agents, who had raised such objections and even the number of ballot papers about which objections were raised has not been stated.

43. Paragraph 39 again quotes the rules contained in sub-clause (m) of clause 17 of the Handbook for Returning Officer prescribing the procedure for rejection of votes. In paragraph 40, the petitioner states that the Assistant Returning Officer in both the segments did not give opportunity to inspect the doubtful ballot papers because there was no counting agent of the petitioner at the centre table where the Assistant Returning Officer was giving his decision on all the doubtful ballot papers. This paragraph too is very vague. It does not mention whether any request was made to the Assistant Returning Officer to allow him a counting agent at the table of the Assistant Returning Officer. In this very paragraph, the petitioner admits that respondent no. 7 had his election agent and counting agents at the centre table of the Assistant Returning Officer. In such a circumstance, there is nothing to suggest that despite request the Assistant Returning Officer did not permit any counting agent of the petitioner to function at the table of the Assistant Returning Officer.

44. In paragraph 41, the petitioner has stated that large number of valid ballot papers having more than one mark in the column of the petitioner but smudge appearing against another candidate were rejected by the Assistant Returning Officer at both the segments of Firozabad. This has been verified as based on information. Source of information has not been disclosed. By the use of the words "large number", the petition is again very vague. He ought to have given specific number of valid votes and the total number of such votes which were not considered in his favour.

45. In paragraph 42, the allegations are that about 300 ballot papers in each segments of Firozabad did not bear the signatures of the presiding Officer and the seal of the polling centre. The allegation contained in the first part of paragraph is contradicted by the allegation in the last part of the paragraph. In the last sentence, the petitioner admits that the back of the ballot papers were not shown to the counting agent. If it was so, then the petitioner ought to have pleaded as to how he arrived at the figure of 300. Thus it appears that whatever has been stated was only an assumption of his counting agents. This paragraph too is quite vague and self contradictory in its allegations.

In paragraph 43, the petitioner stated that ballot papers were wrongly placed in the bundles of different candidates. It was stated that objections raised by the petitioner's counting agents to the Assistant Returning Officer were not paid any attention. Here too, the petitioner is vague. It has not been stated as to which counting agent and in which segment had raised such objections. There is no mention in this paragraph that the objections were oral or written.

47. Paragraph 44 simply states that ballot papers were kept in the bundles of fifties. In continuation of this paragraph 44, it was stated in paragraphs 45 and 46 that the ballot papers of the petitioner were mixed up in the bundles of respondent No. 7. Despite objections, the bundles of respondent No. 7 were not opened and counted again. In this way the votes casted in favour of the petitioner were reduced. It is noteworthy that in item No. 5 of the list of documents the petitioner has stated that he had moved recount application. Item No. 5 reads "recount application given on behalf of the petitioner on 17-6-1991 and orders passed thereon at Firozabad". This account application along-with the orders had not been filed alongwith the petition to show that actually any objection was raised, as contained in paragraphs 45 and 46 of the petition.

48. Paragraph 47 is again vague. It simply states that large number of ballot papers, which were void and invalid, were counted in favour of respondent no. 7. The petitioner ought to have given the figure and preferably the number of ballot papers which were kept in the bundle of respondent no. 7. The use of word "large" is a very flexible narration and leaves a lot of scope to the petitioner to mould his evidence at the time of trial to suit his intention. In view of such a loose and vague narration, it would be difficult for any body replying this paragraph to put forward an effective defence.

49. In paragraph 48, the petitioner states about 150 ballot papers in two segment of Firozabad were not counted in favour of the petitioner. The figure in each segment has not been stated. The use of word about makes the allegations vague.

50. Paragraph 49 is also very vague. Here too it has been stated that about hundred ballot papers in Shikohabad segment and fifty ballot papers in Firozabad segment contained clear official seal marks of vote in favour of the petitioner but as the seal marks were faint due to paucity of ink in the ink pad the votes were rejected arbitrarily and illegally by the Assistant Returning Officer. Here too, the petitioner has used the word "about". The petitioner ought to have given the ballot paper numbers so that this Court should come to the conclusion that this alleged illegal rejection had materially affected the counting.

51. The allegations in paragraph 50 are similar to paragraph 48 mentioned above. Here too, the word "about" has been used before the number of ballot papers which according to the petitioner ought to have been rejected but were wrongly counted in favour of respondent No. 7. In paragraphs 51, 52 and 53, the petitioner alleges that number of ballot papers, which were liable to rejection, were counted in favour of respondent No. 7. In all these paragraphs, the word "about" has been used before the number of ballot papers which ought to have been rejected and were wrongly counted.

52. In paragraph 54, it has been alleged that about fifteen ballot papers in each segment of Firozabad contained minor portion of the official marks in the column of the petitioner and merely an edge of the official seal in the shaded area or slightly towards the areas of some respondent was not counted in favour of the petitioner but illegally rejected. This paragraph does not disclose any cause of grievance. From the allegation in this paragraph itself, it transpires that only in a minor portion the official seal of voting was in the column of the petitioner but the major portion was in the shaded area and even had protruded in the column of other candidates. This paragraph does not disclose any cause of grievance as to materially affect the election of the petitioner. Such votes could not be counted in favour of petitioner. However, in this paragraph the number of ballot papers, which were allegedly rejected, ought to have been mentioned.

53. In paragraph 55, the petitioner complains of poor light in the counting pandal. It was urged that when the petitioner's counting agent had objected to the wrong placing of the ballot papers casting votes in favour of the petitioner were placed in the bundles of other candidates, the counting officer took the perfect of the paucity of light. This paragraph does not show any fact as to show that this paucity of light has materially affected the petitioner's election.

54. In paragraph 56, again the petitioner uses the word "about" before the figure 103. It was alleged that the ballot papers containing votes in favour of the petitioner were removed and not counted for the petitioner and sometimes shown as recovered less votes than polled at the relevant polling station. The petitioner has annexed a chart in schedule no. 1 to the petition. Similar allegations have been made in paragraphs 57 to 59. Schedules 2, 3 and 4 have been attached to the paragraph. These paragraphs 56 to 59 should be read with paragraph 69 of the petition. In this paragraph, it was alleged that after counting and tabulation of three Assembly segments at Agra was over, the petitioner found that he was leading over respondent no. 7 by 17,796 votes. Thereafter, he left for Firozabad and he found that the counting at Shikohabad segment was over. Thereafter, he returned back with some of his counting agents who informed him that there were irregularities and illegalities in counting. Thereafter, he went to counting pandal of Firozabad and there too he learnt various irregularities and illegalities. He had raised protest against such irregularities. Then the Assistant Returning Officer called police force who snatched note-books and papers from the hands of the petitioner, his election agent and counting agents by force. If it was so that the papers in possession of the petitioner and his seal were snatched by the police, then it was incumbent upon the petitioner to state as to from what source he was alleging in paragraphs 56 to 59 the number of various ballot papers which were either illegally not counted in his favour or were wrongly counted in favour of respondent No. 7. Even in paragraph 59, the names of the counting agents, who had complained of irregularities at Firozabad and Shikohabad segments to the petitioner, have not been mentioned.

55. In paragraphs 60 to 64, the petitioner has alleged that there were mistakes in the counting of votes as shown in Form No. 20 of various segments. The petitioner has not shown in these paragraphs as to how he has been able to mention the figures when according to paragraph 69 mentioned above all his papers had been snatched away by the police at Firozabad. In paragraph 65, the petitioner complains that he was not allowed any counting agent at the table where postal ballot papers were being counted. It has not been stated in this paragraph whether any separate table was allotted for counting.

of postal ballot papers or was done on those tables which were counting the votes casted at the polling station. In this way, the allegation in this paragraph 65 are vague.

56. Paragraph 66 contradicts the allegations made in paragraphs 60 to 65. In paragraph 66, the petitioner complains that as no counting agent was present at the centre table, where the votes were being totalled, the totalling could not be watched. If the petitioner's counting agents did not watch the totalling on the table of the Assistant Returning Officer, then it becomes necessary on the part of the petitioner to state the facts on the basis of which he is alleging that the totalling of votes is incorrect.

57. In paragraph 67 the petitioner has alleged that whenever an objection and the question of validity and invalidity of the ballot papers was raised by the counting agent of the petitioner the counting agent was not permitted to handle the same in both the segments at Firozabad. Even on asking, the petitioner's counting agents were not even allowed to note down the serial number of all ballot papers nor the same was made known to him by the counting staff on the plea of maintaining secrecy of the ballot papers. In this paragraph also the petitioner does not mention the name of his counting agent who has raised the objection. The name of counting agent and the nature of objection raised should have been mentioned. It has not been stated in this paragraph that whether the objections were oral or written.

58. In paragraph 68 the petitioner has alleged that he was not allowed to watch the packing and sealing of the used ballot papers and officials also did not get any signature of counting agents. After stating this fact the instruction contained in clause 17(v) of the Hand Book of the Returning Officer has been quoted. This paragraph discloses no cause of action.

59. A reference has already been made about paragraph 69.

60. In paragraph 70 the petitioner has alleged that the ballot box of the last polling station was opened near the Assistant Returning Officer's table and filled up form 20 contained a lot of cutting and over-writings. It was also alleged that the election agent of petitioner had written a short application for recounting addressed to the Returning Officer of parliament pointing out that 10 counting agent of petitioner were permitted for 10 tables and later on counting tables were increased to 20 and due to which the petitioner's counting agent were not present on the increased tables and therefore, a lot of illegalities had been committed in counting. It was urged that this application was not received by the Assistant Returning Officer but the same was got received by a clerk. A copy of this application has not been annexed to this petition. It has been specifically stated that an application was made that the tables were increased during the counting. A copy of this application ought to have been annexed with the petition. It is a material document on which the petitioner has relied. Without this document it would be difficult for the applicant to answer this paragraph.

61. In paragraph 71 it has been stated that when the election agents of the petitioner reached Agra on 17-6-1991 the returning Officer after totalling the votes of five segments of parliamentary constituency declared the result of respondent no. 7 as elected without looking to the application for recounting given at Firozabad which in fact was not sent to him. The allegation of this paragraph does not contain any fact on the basis of which it may be said that declaration of the result at Agra had materially affected the election of the petitioner.

62. In paragraph 72 the petitioner alleged that the form 20 and form 16, part II were substituted for the original as the inspection was not allowed to the petitioner. He had to approach this High Court for inspection. Hence inspection was made. It was noticed that the corrections made in Form 20 and Form 16 part II were missing.

63. In paragraph 73 the only allegation made are that in pursuance of the allegation made in paragraphs 1 to 72 the counting had been done in utter disregard of the provision of the Act, rules framed under the Act and the direction of Election Commission from time to time.

64. After paragraph 73 the following paragraph has been again numbered at 73. In this repeat numbered paragraph 73 the petitioner has given some name and the names of his counting agents at Firozabad from which he alleged to have received the information regarding illegality and irregularity in the counting. If these names were available then it should have been specifically stated as to which counting agent conveyed which information to the petitioner.

65. In paragraph 74 the petitioner has stated that if the counting and scrutiny is done afresh then it would be evident that the petitioner received majority of votes.

66. In paragraph 75 the petitioner has alleged that he is entitled for inspection. Scrutiny and recounting for the ballot papers under the orders of this court and this inspection would indicate that petitioner had actually received majority of votes.

67. The remaining paragraph 76 to 78 are written allegation about filing of the petition within 45 days, deposit of security and filing of copies.

68. The learned counsel for the applicant has drawn my attention to Ram Abhilash vs. The Election Tribunal, Gorakhpur AIR 1958 Allahabad 663. In this case a Division Bench of this court had after quoting the relevant provisions of Section 100 of the Act had observed as follows :

"It is to be noted that the language used in this provision of law renders an election void on the ground that the result of the election has been materially affected by non-compliance with the provisions of the Representation of the people Act or the rules framed thereunder. It is not rendered void by non-compliance with the rules which may have materially affected the result."

\* \* \* \* \*

Consequently, whenever a petition is based on the provisions of S. 100 (d) (iv) of the Representation of the people Act there must be a clear allegation in the first instance that the result of the election has been materially affected and then in addition the petition should show that it has been materially affected by non-compliance with the provisions of the Representation of People Act or the rules framed thereunder."

69. The case of Ram Singh vs. Kazi Mohduddin and others : AIR 1988 Allahabad 210 was also cited by the learned counsel for the applicant. In this case also an application under Order 4, rule 16, C.P.C. had been moved by the respondent for striking out paragraphs 7 to 71 of the Election petition. This Court had considered as to what should be the material fact according to section 83(1) of the Act. This Court held that according to Section 83(1) of the Act the petition must contain a concise statement of material fact on which the petitioner relies. In this case this court had relied upon Jitendra Bahadur Singh vs. Krishna Behari : AIR 1970 SC 277. In Jitendra Bahadur Singh's case it was held by the Supreme Court that the 'material facts' required to be stated are those facts which can be considered as materials supporting the allegations made i.e. they must be such facts as to afford a basis for the allegations made in the petition.

70. In case of Ram Singh also this Court had considered the allegations of the petitioner assailing the entry made in form 20. I have discussed the various paragraphs of the petition. In all the paragraphs the petitioners contentions are quite vague. In most of the paragraphs he has used the word 'about' before the figures. Nothing has been shown

as to on what basis the figures had been arrived at. It is true that evidence has not to be pleaded, but the petitioner must state facts which afford the basis on which each allegation has been made. Such a basis is lacking.

69. The learned counsel for applicant had relied upon *Uditav Singh vs. Madhav Raj Sindhia* : AIR 1976 SC 744. In this case the Supreme Court had stated that all the primary facts which must be proved at the trial by a party to establish the existence of cause of action or his defence are "material facts". It was a case where the charge of corrupt practice had been made. In this case it was held that "particular" are "the details of the case set up by a party". "Material particular" within the contemplation of clause (b) of section 83 (1) mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirement of clause (a). Since in this case no corrupt practice is alleged, therefore, this case does not help the applicant.

70. The learned counsel for the petitioner had urged that the necessary details on the basis of which the result of the petitioner is alleged to have been "materially effected" have been clearly stated. The particulars wherever necessary have been also furnished. It was urged that under Section 138 of the Act the petitioner is entitled to inspection of the papers. After inspection the petitioner could demonstrate that there was error in the counting of votes and the petitioner ought to have been declared as elected. The learned counsel for the petitioner had placed reliance on *Bhimsen vs. Chhattar Singh* (15) 1950 ELR 175 and *Bhimsen vs. Gopali* (22) 1960 ELR 288. In the first case the election Tribunal had allowed inspection of the ballot papers and thereafter permitted an amendment in the election petition. In appeal against the order of the Election Tribunal the High Court had held in its judgment (reported in 1950 ELR) that the petitioner could not be permitted an amendment of the petition. In appeal against the above judgment the Supreme Court held as under:

"Rule 138 provides for the production and inspection of election papers. Until the said papers are produced and inspected as provided by the said rule it would be difficult, if not impossible, for any party to allege affirmatively how many void votes had been counted in favour of the candidate declared to be duly elected".

Relying on these observations, it was urged that the use of the word 'about' in the paragraph was fully justified and the allegation in the petition cannot be held to be vague. The correctness of allegations can be demonstrated only by inspection. I do not agree with this contention. In this case the pleadings are not only vague but also are self contradictory at several places. They lack the necessary details as to amplify and embellish the allegations. Permitting an inspection of ballot papers will amount to a roving enquiry.

73. Learned counsel for the petitioner stated that there is no provision in the "Hand Book for the Returning Officer" that the badges put on by the candidate will bear their names or photographs. They only bear the symbol of the candidate which the agents represents and also their signature. It was, therefore, not at all possible to state the names of the counting agents of other candidates who are said to have committed illegality during the counting.

74. In rejoinder to the argument of the learned counsel for the petitioner, the learned counsel for the applicant had relied upon *A. B. Singh vs. Rajiv Gandhi*, 1985 AWC 415. In this case, 'material fact' has been stated to mean facts which are necessary for formulating a complete cause of action. It was held after relying on *Roopal Sathi V. Mechchattar Singh*, 1983 Supreme Court Cases 487 and *Samant M. Bal Krishna V. George Fernandes* : AIR 1969 SC 1201 that if any one material statement is omitted from

the pleading the statement of the claims is bad. However, in this case Hon'ble Kamleshwar Nath J. observed :

The expression 'frivolous' has been described in Webster's Third New International Dictionary (1971 Edition) Volume 1 page 913 as something "of little weight or importance having no basis in law or facts." The expression 'embarrassing' has been stated to mean, in the same Dictionary at page 739 of Volume I "to place in doubt perplexity of difficulty". In the case of *Devy V. Garret* (1878) 7 Ch. D 473, it has been stated at page 483 that nothing is more embarrassing to a defendant than a number of statements which may be irrelevant and which the defendant therefore, does not know what to do. It has further been held that each party is entitled, ex devide sections, to have his case against him prescribed in an intelligible form so that he may not be embarrassed in meeting it. Under Order VI rule 16 such of the pleadings as suffer from the vice of being frivolous, vexatious or embarrassing may be struck out."

75. I have discussed whole of the pleadings in the petition in sufficient details. The pleadings are not only vague but are also self contradictory at some places. In such a situation it would be very difficult for the respondent No. 7 to meet the allegations. The pleadings are frivolous embarrassing also.

76. In Election Petition No. 1 of 1978 : Sri Swami Prasad Singh V. Sri Ram Naresh Yadav decided on 16-1-1979, Hon'ble M. P. Mehta. J. after discussing several case laws had formulated the following principles with regard to deciding the controversy arising from an application under Order VI Rule 16, C.P.C.

In the light of the aforesaid case law, it seems to me that the following broad points seem to serve as the guidelines in deciding the controversy at hand :

- (1) In an election petition the court has a power to act under Order VI Rule 16, C.P.C.
- (2) The power to strike out pleadings under Order VI Rule 16, C.P.C. is discretionary. It is not imperative.
- (3) The power to strike out the pleadings under Order VI Rule 16, C.P.C. should be strictly construed and should be sparingly used as basically it is for the parties concerned to shape and mould their pleadings.
- (4) If material facts are not given in an election petition as distinguished from material particular then the allegations are liable to be struck out and the petition itself can be dismissed under section 87.
- (5) Particulars can be directed to be supplied even after the expiry of the period of limitation and in case the order is not complied with then the court can act under Order VI Rule 16, C.P.C.
- (6) Evidence need not be pleaded in the pleadings as laid down in Order VI Rule 2, C.P.C. which provision has been held applicable to an election petition also as laid down in AIR 1973 SC 2158 (Supra).
- (7) Even if the court refused to exercise its powers under Order Rule 16, C.P.C., it will not mean that it had inherently held that the particulars and details contained in the election petition are full and sufficient and its power to refuse to frame triable issues on the ground of the infirmities in the statements contained in the petition will remain unfettered and unrestricted."

77. Even on testing the case in the light of above guidelines, I find that the paragraphs mentioned below are vague, self contradictory, frivolous and it would be difficult for the respondent No. 7 to reply these paragraphs. Hence, it is a fit case in which the discretion under Order VI Rule 16, C.P.C. should be exercised and under section 87 of the Act the petition itself should be rejected.

78. The application under section 86(i) of R. P. Act is rejected.

79. In view of the foregoing discussions, the application under Order 7 Rule 77, C.P.C. read with Order 6 Rule 16, C.P.C. and section 86(1) of the Act is allowed and para-

graphs 10, 16 to 28, 30 to 34, 36 to 38 and 40 to 72 are struck off under Order VI Rule 16 of the Code of Civil Procedure. After striking off all these paragraphs, the petition contains no cause of action which deserves a trial. The petition is, therefore, dismissed cost easy.

Dated : November 27, 1992.

Sd/- G. D. DUBE, J.  
[No. 82/UP-HP/20/91]

By Order,

HARINDER HIRA, Secy.,  
Election Commission of India

S. B. Kushwaha

Examined by : Sd/- illegible 28-1-93

